

November 14, 2011

Via Electronic Filing

James Arden Barnett, Jr., Rear Admiral (Ret.)
Chief, Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Written *Ex Parte* Communication, PS Docket No. 11-82

Dear Admiral Barnett:

The undersigned, from the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) was among 28 individuals from nine associations and 11 individual companies¹ comprised of large, mid-sized and small broadband Internet service providers, interconnected voice over Internet protocol (VoIP) providers, and backbone providers that met with you and Commission staff members on Thursday, November 10, 2011. Commission attendees included Josh Gottheimer from the Office of Chairman Julius Genachowski; Austin Schlick and Julie Veach of the Office of General Counsel; Jeffery Goldthorp, Lauren Kravetz, and John Healy of the Public Safety and Homeland Security Bureau; and Chuck Needy of the Office of Strategic Planning and Policy Analysis.

OPASTCO understands the critical importance of providing reliable interconnected VoIP and broadband services and shares the Commission's goal of promoting policies and programs that ensure Americans have access to emergency services in times of national emergency, local disaster, and public health crises. However, we do have concerns regarding the proposed reporting requirements for broadband service providers.

The record in this proceeding demonstrates that the rules proposed in the Commission's Notice of Proposed Rulemaking are unnecessarily broad and are not narrowly tailored to the Commission's stated goal in this proceeding of ensuring that access to 9-1-1 systems is reliable. Indeed, the record demonstrates that employing quality of service metrics as a surrogate for network availability is not an efficient or narrowly-tailored approach to identify when IP networks are unable to deliver emergency traffic. Accordingly if adopted, the proposed reporting obligations will impose significant, unnecessary costs on the industry when other more

¹ This group included Barbara Esbin, Cinnamon Mueller for the American Cable Association; Melissa Newman and Lawrence Sarjeant, CenturyLink; Mary Albert, Comptel; Daniel Malfara, Consultant to Comptel; Mike Saperstein, Frontier; Erin Boone, Level 3 Communications, LLC; Terri Natoli, Time Warner Cable; Kate Dean, United States Internet Service Provider Association; Donna Epps, Nneka Ezenwa, and David Young, Verizon; Tiki Gaugler and Lisa Youngers, XO Communications; Anisa Latif and Joe Marx, AT&T; Mary McManus, Comcast; Brian Josef, CTIA-The Wireless Association; Chuck Jackson, Consultant to CTIA; Micah Caldwell, Independent Telephone and Telecommunications Alliance; Steve Morris, National Cable and Telecommunications Association; Ray Rothermel, Sprint Nextel; Harold Salters, T-Mobile USA; Glen Reynolds and Anthony Jones, US Telecom; Glenn Richards, VON Coalition; and Malena Barzilai, Windstream.

effective approaches could satisfy the benefit of ensuring the reliability of IP networks. Further, the proposed rules are inconsistent with the Administration's policy goals of regulatory flexibility, simplification of reporting and compliance requirements, and reducing regulatory burdens on businesses. Before proceeding with any action on outage reporting as proposed in the pending notice, we strongly urge you to undertake a thorough and careful cost-benefit analysis and work with industry to identify a more targeted approach to achieve the Commission's stated goal in this proceeding.

President Obama has clearly expressed a desire for government agencies to adopt new regulations "only after consideration of their costs and benefits (both quantitative and qualitative)."² The President also has indicated that government agencies should "identify and use the best, most innovative, and *least burdensome* tools for achieving regulatory ends."³ Under Chairman Genachowski's leadership, the Commission has embraced this objective and reviewed, eliminated or refrained from imposing unnecessary regulation in a variety of areas. Last week, Chairman Genachowski reaffirmed his commitment to "removing needless burdens on industry, enabling the agency to efficiently promote competition and empower consumers, and unleashing innovation and investment across the broadband economy."⁴ The Chairman also expressed his willingness to "proactively explore[] creative alternatives to rules."⁵ Just last month, the Commission analyzed the costs and benefits associated with mandating new wireless usage alerts, and appropriately recognized an opportunity for a non-regulatory solution to satisfy the Commission's public policy objectives.

We ask you to apply that same flexibility, innovative thinking, and willingness to engage with industry to develop creative solutions in this proceeding. The proposed rules for outage reporting of broadband networks are not narrowly-tailored. Rather than focusing on those outages that result in the actual loss of an end user's ability to complete a call to emergency officials, the proposed rules would establish specific service quality thresholds related to latency, jitter, and packet loss that could require providers to file reports with the Commission *even though the user is able to communicate with public safety officials*.

In addition to being unduly broad, the proposed requirements will impose significant economic burdens on broadband Internet service providers (ISPs). The assertion in the Notice that these rules would not be burdensome because companies already collect and possess the required data is not supported by any evidence in the record. To the contrary, service providers do not routinely monitor network performance at the level of granularity proposed in the Notice. It would be highly costly to implement such a regime.

In light of these burdens, the Commission is obligated to explore less burdensome alternatives to the proposed rules. Specifically, the Commission should first work with stakeholders to develop a set of outage reporting criteria that is designed to provide meaningful information about actual service disruptions that affect access to emergency services. Using

² President Barack Obama, Executive Order 13579 (July 11, 2011), 76 FR 41857 (2011).

³ President Barack Obama, Executive Order 13563 (Jan. 18, 2011), 76 FR 3821 (2011) (emphasis added).

⁴ Chairman Genachowski, "Remarks of Chairman Julius Genachowski at The Georgetown Center for Business and Public Policy's Evolution of Regulation series," *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310876A1.pdf, at 2 (Nov. 7, 2011).

⁵ *Id.* at 6.

such a framework, which has seen great success in other contexts,⁶ the Commission and interested stakeholders can develop a voluntary trial program for routine broadband access network outage reporting that will allow the Commission to evaluate the efficacy of the reporting criteria and determine whether and how to refine the process for IP outage reporting.

Public access to emergency services is critical. The Commission should take the time now to ensure that the right set of voluntary broadband outage reporting parameters are developed, and not rush prematurely to adopt the proposed flawed rules. We look forward to future collaborative efforts and urge the Commission to rely on these efforts in the instant proceeding and in the future.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Respectfully Submitted,

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⁶ See, e.g., MEASURING BROADBAND AMERICA at 30, available at <http://www.fcc.gov/measuring-broadband-america> ("This Report benefited from the voluntary participation of a number of parties. The contribution of their expertise to the development of the methodologies employed in this Report materially increased its quality.").